

THE UNITED STATES DISTRICT COURT

DISTRICT OF MASSACHUSETTS (Boston)

No. 1:23-cv-10511-WGY  
Vol 1, Pages 1 - 93

UNITED STATES OF AMERICA, et al,  
Plaintiffs

vs.

JETBLUE AIRWAYS CORPORATION, et al,  
Defendants

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For Bench Trial Before:  
Judge William G. Young

United States District Court  
District of Massachusetts (Boston)  
One Courthouse Way  
Boston, Massachusetts 02210  
Wednesday, November 15, 2023

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REPORTER: RICHARD H. ROMANOW, RPR  
Official Court Reporter  
United States District Court  
One Courthouse Way, Room 5510, Boston, MA 02210  
rhrbulldog@aol.com

## A P P E A R A N C E S

EDWARD WILLIAM DUFFY, ESQ.

ARIANNA MARKEL, ESQ.

AARON TEITELBAUM, ESQ.

DOJ-Atr

450 Fifth Street NW, Suite 8000

Washington, DC 20530

(202) 812-4723

Email: Edward.duffy@usdoj.gov

and

WILLIAM T. MATLACK, ESQ.

Attorney General's Office

One Ashburton Place, 18th Floor

Boston, MA 02108

(617) 727-2200

Email: William.matlack@mass.gov

For Plaintiffs United States of America and

The Commonwealth of Massachusetts

RYAN SHORES, ESQ.

Cleary Gottlieb Steen & Hamilton LLP

2112 Pennsylvania Avenue, NW

Washington, DC 20037

(202) 974-1876

Email: Rshores@cgsh.com

and

ELIZABETH M. WRIGHT, ESQ.

Cooley LLP

500 Boylston Street

Boston, MA 02116-3736

(617) 937-2349

Email: Ewright@cooley.com

and

RACHEL MOSSMAN ZIEMINSKI, ESQ.

MICHAEL MITCHELL, ESQ.

Shearman & Sterling LLP

2601 Olive Street, 17th Floor

Dallas, TX 75201

Email: Rachel.zieminski@shearman.com

For Defendant JetBlue Airways Corporation

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2  
3 JAY COHEN, ESQ.

ANDREW C. FINCH, ESQ.

4 Paul, Weiss, Rifkind, Wharton & Garrison

1285 Avenue of the Americas

5 New York, NY 10019-6064

(212) 373-3000

6 Email: Jaycohen@paulweiss.com

For Defendant Spirit Airlines, Inc.

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10

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1 P R O C E E D I N G S

2 (Begins, 9:00 a.m.)

3 THE COURT: Good morning, we're ready to go.  
4 Please remind the witness.

5 THE CLERK: I'd like to remind you, sir, that you  
6 are still under oath.

7 Do you understand?

8 THE WITNESS: Yes.

9 THE COURT: And, Ms. Bansal, you may continue.

10 MS. BANSAL: Thank you, your Honor.

11 THE COURT: Not continue. You may proceed.

12 (Laughter.)

13 MS. BANSAL: Thank you.

14

15 CROSS-EXAMINATION BY MS. BANSAL: (Continued.)

16 Q. Good morning, Mr. Wells.

17 A. Good morning.

18 Q. We're going to go -- we're going to start by  
19 bringing Exhibit 706, which was admitted into evidence  
20 yesterday, back on the screen, and I think that will be  
21 Tab BUY in your binder.

22 MS. BANSAL: Your Honor, this is the --

23 THE COURT: Yeah, "BUY"?

24 MS. BANSAL: Yes. And it's the page ending in  
25 3230.

1 Q. So, Mr. Wells, please orient ourselves and the  
2 Court.

3 Yesterday you were explaining the evolution of  
4 Allegiant's business model, correct?

5 A. Correct.

6 Q. And you were explaining how in the past 5 to 7 years  
7 Allegiant has entered a number of larger cities over  
8 time, correct?

9 A. Correct.

10 Q. Now in addition to entering larger cities, are there  
11 other aspects of Allegiant's evolution?

12 A. With respect to network or more broadly?

13 Q. Correct, network, um, utilization, frequency.

14 A. Sure. So with respect to the network, um, there's  
15 been a lot more, I guess, connections between  
16 nontraditional Allegiant cities, for example an Austin  
17 to a Cincinnati, which doesn't necessarily have a core,  
18 um, some destination attached to it, but it's more of a  
19 Visiting Friends and Relatives-style connection.

20 As we think about the fleet, we move from  
21 exclusively or nearly exclusively a used operator to  
22 ordering a brand new Boeing Max fleet, which we'll start  
23 to deliver the early part of next year, but will serve  
24 as a backbone for our growth moving forward. But it's a  
25 bit of a departure from kind of how we thought about the

1 company 20 years ago.

2 Beyond that, um, you know we're building a resort  
3 in Southwest Florida, which is a little bit of a  
4 departure for an airline as well.

5 Q. And in addition to those things that you just  
6 mentioned, has Allegiant also evolved over time into  
7 entering larger cities and geographic regions?

8 A. Certainly as a part of those kind of last 5 to 7  
9 years, as you mentioned, is a big part of it.

10 Q. And that would include, um, bigger airports and  
11 geographic regions, correct?

12 A. Correct.

13 Q. And Allegiant sometimes refers to its evolution as  
14 "Allegiant 2.0," is that right?

15 A. Correct.

16 Q. So yesterday the Department of Justice asked you  
17 about Allegiant's business strategy with respect to  
18 frequencies, um, and you testified that Allegiant  
19 strives to match capacity with demand, is that fair?

20 A. Yes.

21 Q. And so as a part of that Allegiant sometimes offers  
22 less than daily service on its routes, fair?

23 A. Correct.

24 Q. Can you explain to the Court what benefits there are  
25 from flying less than daily on your network?

1 A. Um, to us I mean primarily it's not flying empty  
2 aircraft around, which on the one hand would lose us  
3 money, is not ideal, but it's certainly better from an  
4 environmental perspective, right? Flying an empty  
5 aircraft around does nobody any good.

6 Q. And does it also result in cost savings for the  
7 airline?

8 A. Certainly, yeah.

9 Q. And are you able to pass those cost savings on to  
10 your passengers?

11 A. We believe so, yes.

12 Q. You testified yesterday that Allegiant flies  
13 approximately 10 percent of its network on a daily  
14 basis, right, around 58 routes?

15 A. Correct.

16 Q. And that's because Allegiant has identified on those  
17 routes that there is sufficient demand, right?

18 A. Yes.

19 Q. Now if Allegiant already flies a route and  
20 identifies that there is an uptick in demand, Allegiant  
21 can increase its capacity, correct? I'm sorry, increase  
22 its frequency, correct?

23 A. Correct.

24 Q. Now you mentioned sometimes providing service  
25 through smaller airports in a city. You sometimes refer



1 to those as "proxy airports"?

2 A. Yes.

3 Q. And do you believe those proxy airports compete with  
4 the larger airports in the region?

5 A. Yes, absolutely.

6 Q. So what are some benefits from flying out of proxy  
7 airports?

8 A. From our perspective there generally is cost savings  
9 associated with the proxy airport. From a customer  
10 perspective we believe it's a much more seamless  
11 experience, it's quicker from the parking lot to the  
12 gate, quicker through the TSA lines, and all around just  
13 a better and faster experience for the customer.

14 Q. And so with respect to the cost savings, again are  
15 you able to pass those on to your passengers?

16 A. Certainly.

17 Q. And I believe you're saying that there's some  
18 passengers that in fact prefer the proxy airport, is  
19 that right?

20 A. That's my strong belief, yes.

21 Q. Because there's less congestion, less traffic, in  
22 and out?

23 A. Right.

24 Q. Now you said that these proxy airports sometimes  
25 compete with the larger airports in the region. So let

1 me name a couple of proxy airports and you can tell me  
2 whether it competes with the larger airport in the  
3 region.

4 A. Okay.

5 Q. Baltimore Washington International.

6 A. Yes.

7 Q. That competes with Dulles and, um, DCA, correct?

8 A. Correct.

9 Q. Midway in Chicago. That competes with O'Hare,  
10 correct?

11 A. Correct.

12 Q. And I believed you testified yesterday that Midway  
13 is actually the hub for Southwest, do I have that right?

14 A. They have a very strong presence there, yes.

15 Q. And Midway is actually located closer to Downtown  
16 Chicago than O'Hare, is that right?

17 A. It's much more convenient, yeah.

18 Q. So that goes back to the seamless experience you  
19 were telling us about?

20 A. Correct.

21 Q. What about Saint Pete's Clearwater International?

22 A. It's Tampa International, yes.

23 Q. So that is an airport that competes with Tampa?

24 A. Yes.

25 Q. And what about Sarasota Airport?

1 A. That's not so much a proxy, I view that as  
2 competitive in and of its own right.

3 Q. Okay. So with Saint Pete, that competes with Tampa?

4 A. Uh-huh.

5 Q. And how far is Saint Pete's from the Tampa Airport?

6 A. It's really just across the bridge, it's not very  
7 far. 20 minutes maybe.

8 Q. 10 miles perhaps?

9 A. Yeah.

10 Q. So it's very close?

11 A. Yes.

12 Q. Now what about Sanford Airport, does that compete  
13 with MCO?

14 A. Yes.

15 Q. And you currently fly out of Sanford?

16 A. Correct.

17 Q. And have you just recently announced that you will  
18 expand at MCO?

19 A. Not officially or formally announced, but it is on  
20 the website, um, to ensure it was working when we did  
21 intend to announce it.

22 THE COURT: I should know this, but "MCO" is?

23 MS. BANSAL: Orlando.

24 THE COURT: Thank you.

25 Q. So now you will compete out of both airports in

1 Orlando?

2 A. Correct.

3 Q. And what about AZA in Phoenix, does that compete  
4 with Sky Harbor?

5 A. Yes.

6 Q. And what about Punta Gorda, does that compete with  
7 Fort Meyers?

8 A. Yes.

9 Q. So you testified yesterday that Allegiant competes  
10 with other airlines on about 25 percent of its routes,  
11 correct?

12 A. Correct.

13 Q. And I believe you said that's somewhere around 124  
14 routes?

15 A. Yes.

16 Q. And so because Allegiant flies so many routes  
17 overall, over 500, 25 percent is actually over 100  
18 routes?

19 A. Correct.

20 Q. So you're competing on over 100 routes --

21 A. Yes.

22 Q. And you don't choose your routes based on whether  
23 there's a competitor on it or not, do you?

24 A. Correct.

25 Q. How do you -- how does that factor play into your

1 decision to enter, if at all?

2 A. Um, only so far as what the prevailing fares and  
3 capacity levels are that we believe we can stimulate,  
4 um, incremental demand at our price point. For example,  
5 when we launched Austin Texas to Las Vegas, Southwest  
6 was very prevalent on the market, however in the 12  
7 months before serving the 12 months after, Southwest  
8 carried the same number of passengers and every one that  
9 flew on Allegiant was clearly stimulated into that  
10 market.

11 Q. And so you choose the route that would be the most  
12 profitable for you?

13 A. That's certainly the hope as we forecast it out,  
14 yes.

15 Q. Whether there's a competitor on them or not?

16 A. Correct.

17 Q. Now of those 100 routes, 100-plus routes I should  
18 say, how many does Allegiant compete with a Big 4  
19 airline?

20 A. Um, a Big 4 is not particularly -- well I should  
21 take that back. Southwest is meaningful and close to 20  
22 percent, um, of the overall picture. So almost all of  
23 the competitive routes have Southwest. The other three  
24 legacies are a bit less so.

25 Q. So including Southwest, is it fair to say that above

1 95 percent of your routes have either Southwest, United,  
2 Delta, or American on them?

3 A. Above 90 for sure, but 95, I could believe.

4 Q. Now I'm going to -- I'd like to get your reaction to  
5 this statement. And this is not my statement.

6 "Allegiant is afraid to compete against the  
7 legacies." Is that true, Mr. Wells?

8 MR. DeRITA: Objection.

9 THE COURT: I don't understand that. It's not  
10 connected to anything.

11 MS. BANSAL: I can provide more context, your  
12 Honor.

13 THE COURT: I mean I've never heard someone say,  
14 "I'd like your comment on this statement, but it's not  
15 my statement." It's an intriguing --

16 (Laughter.)

17 MS. BANSAL: Let me provide more context, your  
18 Honor.

19 THE COURT: So in light of the objection,  
20 sustained.

21 Go ahead.

22 Q. So in the Department of Justice's trial -- in the  
23 trial transcript of its opening statement, DOJ  
24 represented, "For instance, you will hear from another  
25 ULCC that one of the pillars of its business strategy is

1 flying routes that have little competition." And then  
2 the Department of Justice clarified that they were  
3 speaking about Allegiant.

4 Does that provide enough context for you,  
5 Mr. Wells, to get your reaction?

6 THE COURT: Now I have the context, I might have  
7 suspected it, but what they say in their opening is not  
8 evidence. What you folks have said in the opening is  
9 not evidence. I don't -- his reaction to it --

10 You're afraid to compete with legacies?

11 THE WITNESS: Not afraid, no, sir.

12 THE COURT: Well that takes care of it. I mean  
13 that's his testimony.

14 MS. BANSAL: Thank you, your Honor.

15 THE COURT: It's one of those "What did you expect  
16 him to say? questions.

17 (Laughter.)

18 THE COURT: Go ahead.

19 Q. All right. All these competitive routes, go back to  
20 the 124 routes, how many routes does it compete with  
21 other ULCCs?

22 A. Um, Frontier and Spirit both come in second and  
23 third, so they would, you know, be somewhere around 15  
24 to 20 percent of routes.

25 Q. Of the 124?

1 A. Of the total picture. That would include routes  
2 where perhaps Southwest and a legacy are on as well as a  
3 ULCC. There's more than one competitor on several  
4 routes.

5 Q. I see. So there might be a number of routes in  
6 which you have a Big 4 and a ULCC?

7 A. Correct.

8 Q. But if you were looking at just routes total with a  
9 ULCC, would that number be higher?

10 A. That would be in that 15 to 20 percent of total  
11 routes.

12 Q. So is it fair to say that Allegiant does not  
13 preclude servicing routes with other competitors?

14 A. Correct.

15 Q. Is it fair to say that Allegiant does not shy away  
16 from competition?

17 A. Correct.

18 Q. Is it fair to say that Allegiant will consider  
19 entering large markets after the merger should those  
20 opportunities arise?

21 A. Absolutely.

22 Q. In fact you testified yesterday that you'll consider  
23 all opportunities that may arise after the merger  
24 regardless of city size, correct?

25 A. Correct.



1 Q. That's true today?

2 A. Yes.

3 Q. And it will be true after the merger, right?

4 A. Yes.

5 Q. (Pause.) Now if the merger goes through and there  
6 are certain routes on which Spirit exits, would  
7 Allegiant consider those to be opportunities?

8 A. Yes.

9 Q. And if the merger should go through and the  
10 Department is correct that fares will go up, would  
11 Allegiant consider those routes potential opportunities?

12 A. We would certainly consider them, yes.

13 Q. And in the past has Allegiant taken advantage of  
14 opportunities arising from other mergers?

15 A. Yes.

16 Q. Can you tell us an example of that?

17 A. When Southwest and AirTran merged, excuse me, um,  
18 there was meaningful capacity, it was pulled out of --  
19 more midsized cities on the East Coast that AirTran  
20 serviced and Southwest did not that we backfilled a  
21 meaningful amount of capacity in.

22 Q. And do you have an estimate of "meaningful  
23 capacity"?

24 A. Um, it's, you know, kind of hard to say at this  
25 point, it's been a while.

1 Q. But a substantial number of routes?

2 A. Correct.

3 Q. Now when opportunities arise, is it important for  
4 Allegiant to move quickly?

5 A. Yes.

6 Q. Why is that?

7 A. Um, we do believe that there is a first-mover  
8 advantage when opportunities arise, and there are other  
9 ULCCs that have the same publicly-available information  
10 that we do that may or may not view the opportunity like  
11 we do.

12 Q. And so when opportunity arises, if Allegiant is  
13 interested in that opportunity, it has to move fast?

14 A. We believe so, yes.

15 Q. And if you do decide to enter a route, how quickly  
16 can you do so?

17 A. We believe that we can get everything together to  
18 make an announcement within, um, 2 to 4 weeks generally,  
19 depending on whether or not we exist in that city  
20 already. And then of course we want a, you know, 2 to 4  
21 months, depending on how long the flight is, for a  
22 booking curve to develop for the first flight.

23 Q. All right, Mr. Wells, let's talk about Allegiant's  
24 fleet.

25 So you testified yesterday that Allegiant has

1 approximately 127 planes in its gates currently?

2 A. Correct.

3 Q. And I believe you said your current fleet  
4 utilization is somewhere around 7 hours per day?

5 A. Yes.

6 Q. Is Allegiant in the process of trying to increase  
7 its utilization?

8 A. Absolutely.

9 Q. And can you tell us what you would like to increase  
10 it to?

11 A. In 2019, um, we accomplished something closer to 8  
12 hours per day per aircraft, I think that's probably the  
13 right level for us depending on the fuel environment,  
14 the demand environment, and some other fluid variables.

15 THE COURT: I hear you say you'd like to increase  
16 to 8 hours and you're working toward that, but at 8  
17 hours you think that's correct for your fleet. You  
18 haven't got a sense you want to increase it further?

19 THE WITNESS: Some of that would depend on the  
20 prevalent fuel environment. For example, in 2019 it was  
21 about \$2.15. If we were to see something at \$1.15, I  
22 would expect that number to go higher. I just don't  
23 know if that's a reasonable estimate at this time.

24 Q. And would that utilization increase with your new  
25 fleet coming in?

1 A. Certainly. The Boeing Max has 20 percent less fuel  
2 burn, which produces a better economic outcome for us to  
3 fly more.

4 Q. And so how much higher would you anticipate it to be  
5 with the new planes?

6 A. Um, we believe we should fly those probably 10 to 20  
7 percent more than we would the Airbus.

8 Q. In 2022, did Allegiant enter an agreement with  
9 Boeing to take delivery of additional aircraft?

10 MR. DeRITA: Objection, this is outside the scope,  
11 so I believe that counsel should not be allowed to --

12 MS. BANSAL: I disagree, your Honor.

13 THE COURT: Why?

14 MS. BANSAL: Because their entire direct was about  
15 trying to establish that Allegiant is not a credible  
16 competitor and all of these questions go to discrediting  
17 that.

18 THE COURT: I think you can -- as to this subject  
19 you take it on direct, you can do that.

20 MS. BANSAL: All right. So may I proceed, your  
21 Honor?

22 THE COURT: Of course you may proceed.

23 THE WITNESS: I apologize. Can you repeat it?

24 Q. Do you have additional aircraft coming in?

25 A. Yes.

1 Q. And can you describe the details of that order?

2 A. At a high level at least. There are 50 firm Boeing  
3 Max aircrafts split between the Dash 8200 variant and  
4 the Dash 700. Along with that there are 80 options for  
5 future purchases of Boeing Max aircraft.

6 Q. And so if I understand you correctly, you have a  
7 commitment to purchase 50 planes?

8 A. Correct.

9 Q. And you will be -- you have an option to receive an  
10 additional 80 planes?

11 A. Correct.

12 Q. And how do those additional 80 planes impact your  
13 ability to grow, if at all?

14 A. They would have a meaningful impact to growth.  
15 We'll certainly have some retirements of older aircraft,  
16 but this order was almost entirely dedicated to the  
17 growth of the airline.

18 Q. And how will it increase your flexibility, if at  
19 all?

20 A. We believe with the lower fuel burn and a similar  
21 fixed-cost profile, um, we'll be able to fly more often  
22 in lower-demand environments, while still maintaining  
23 the ability to park the aircraft if we need to continue  
24 to match capacity with demand in say September.

25 Q. Okay. How many seats are there on these new Boeing

1 737s?

2 A. We'll take, um, the Dash 8200s at 190 seats, and the  
3 Dash 700s at I believe it's 163.

4 Q. And when will you start taking delivery of these new  
5 planes?

6 A. The first one is estimated at either the end of  
7 January or the beginning of February.

8 Q. And at what pace do you anticipate receiving these  
9 planes?

10 A. The expectation is two per month, um, after that,  
11 until we've completed the 50 firm.

12 Q. And is that 2 per month every month for the next  
13 year, do I have that correct?

14 A. Um, yes, correct.

15 Q. And is that also correct for the following year?

16 A. Correct.

17 Q. (Pause.) All right. Let's pull up Wells  
18 Demonstrative 1.

19 Okay. How many aircraft do you have in your fleet  
20 currently?

21 A. 127 is in the document.

22 Q. And how many do you believe you'll receive next  
23 year?

24 A. Next year would be approximately 27, but 25 Boeing  
25 and 2 Airbus are to come on line.

1 Q. And in 2025, how many?

2 A. That should be the balance of the last 25.

3 Q. And then you have the option, right? How many are  
4 in your option?

5 A. The 80.

6 Q. And then I believe you said they'll be some that you  
7 plan to retire?

8 A. Correct.

9 Q. Roughly how many do you think you'll retire over  
10 this period of time?

11 A. We've talked about retiring our 27 oldest aircraft  
12 over the next three to four years.

13 Q. Okay, so this Demonstrative shows 21, but you  
14 believe it's closer to 27?

15 A. Yeah.

16 Q. Okay. And so in total -- and I'm asking you to do a  
17 little bit of math on the fly here.

18 In total, taking into account the retirements and  
19 taking into account the options, how many planes could  
20 you have by the end of 2019? And an estimate is fine.

21 MR. DeRITA: Objection. Calls for speculation.

22 THE COURT: Oh, I think not. He can estimate  
23 this.

24 A. Yeah, hold it, please. (Laughter.) (Pause.) It  
25 looks like 230, if I use my 27 number on the

1 retirements.

2 THE COURT: But would that be -- you're looking at  
3 that document here, and somebody made that up for this  
4 trial. Do you think the numbers here are roughly  
5 accurate?

6 THE WITNESS: Yes, sir.

7 THE COURT: Okay. And so your estimate is what?

8 THE WITNESS: The 230.

9 THE COURT: The 230. All right.

10 Q. All right, Mr. Wells, a new topic.

11 MS. BANSAL: You can bring the demo down.

12 Q. Yesterday you talked about a joint venture between  
13 Allegiant and Aviva Aerobus, correct?

14 A. Correct.

15 Q. And I believe you said that if that application had  
16 been approved, you would be serving Mexico today,  
17 correct?

18 A. Correct.

19 Q. And if that application were to be approved today,  
20 how quickly could you be serving Mexico?

21 A. We believe we can be selling within probably 30 days  
22 with about a 3-month window to begin operations.

23 Q. Now in addition to Mexico, are, um -- are the  
24 Caribbean and Latin America natural extensions of your  
25 offerings?



1 A. Very much so, yeah.

2 Q. And so those would be natural next steps for your  
3 international expansion?

4 A. Correct.

5 Q. And do you have any constraints into expanding  
6 there?

7 A. Um, nothing that anyone else wouldn't have, just  
8 some IT development and some regulatory approvals that  
9 would be needed. But that's it.

10 Q. So you believe you could overcome those obstacles?

11 A. Certainly.

12 Q. And would you consider returning to Puerto Rico if  
13 it were profitable for the airline?

14 A. Yes.

15 Q. All right, let's talk about your divestitures.

16 MS. BANSAL: We can pull up Wells Demonstrative 2.

17 Q. So this demonstrative reflects the assets that  
18 JetBlue will divest to Allegiant if the merger goes  
19 through, correct?

20 A. Correct.

21 Q. Okay. Can you explain to the Court why you  
22 purchased these assets?

23 A. Sure. I'll kind of take it in two pieces. For  
24 Boston to Newark, it represents an opportunity to expand  
25 a presence, that in both airports we've been constrained

1 to the international gates in a relatively tight time  
2 window, generally midmorning to early afternoon, and  
3 have had an inability to get a preferential gate. In  
4 Fort Lauderdale we have a long track record of success  
5 and look forward to growing a bit more rapidly than  
6 we've been able to otherwise.

7 Q. And I believe you just said that Allegiant already  
8 operates at all three of these airports?

9 A. That's correct.

10 Q. And so you're familiar with the airports?

11 A. Correct.

12 Q. You've done your diligence into the airports and the  
13 regions around them?

14 A. Yes.

15 Q. And so I believe you just testified, you've had  
16 about as much success as you can with what you have  
17 today?

18 A. In terms of our ability to grow, um, it's extremely  
19 constrained, yes.

20 Q. And so these preferential gates that you will  
21 receive will unlock your growth in these three regions,  
22 do you agree?

23 A. Absolutely.

24 Q. Now do you remember the maps that the Department  
25 showed you yesterday?

1 A. The route maps from the region website?

2 Q. Correct.

3 A. Yes.

4 Q. Would you like me to pull them back up or do you  
5 remember them?

6 A. It depends on what level of detail you'd like, I  
7 suppose. (Laughter.)

8 Q. Okay, let's try it without and then you can tell me  
9 whether it would be helpful for me to pull them up.

10 A. Okay.

11 Q. So those maps show where Allegiant currently flies,  
12 is that fair?

13 A. Correct. Yes.

14 Q. It does not show where Allegiant could fly, correct?

15 A. Correct, yes.

16 Q. And it does not show where Allegiant could fly if it  
17 had the divestiture assets, correct?

18 A. Correct.

19 Q. So with those assets in hand, you would expect those  
20 maps to look completely different, is that fair?

21 A. Absolutely.

22 Q. Yesterday you testified that there might be some  
23 certain runway authorization spots at Newark in the  
24 early-morning hours that may be a little bit more, um --  
25 that might take more effort to use, is that fair?

1 A. Yes.

2 Q. Are there steps that Allegiant could take to make  
3 those authorizations easier to use?

4 A. Yes.

5 Q. What are some of those steps?

6 A. Um, at the most extreme end, we could base crew and  
7 aircraft in Newark and be able to start the day at that  
8 time. Alternatively we could rest our aircraft  
9 overnight out of base, which is a fairly natural, I  
10 think, next step for the airline regardless.

11 Q. And would Allegiant consider, um, doing the  
12 out-of-base options?

13 A. Yes.

14 Q. And that would ease the, um, any difficulty with  
15 those early-morning slots?

16 A. Yes.

17 Q. Is there any doubt in your mind that with these  
18 assets Allegiant will become a stronger competitor out  
19 of these three cities?

20 A. No doubt.

21 Q. And are you confident that when the assets transfer,  
22 you will be poised and ready seize available  
23 opportunities?

24 A. Absolutely.

25 Q. And that will allow Allegiant to offer low-cost

1 fares to consumers in Newark, South Florida, and Boston,  
2 correct?

3 A. Correct.

4 Q. All right, our final topic, Mr. Wells.

5 Approximately how much revenue did Allegiant  
6 generate last year?

7 A. Somewhere in the 2 1/2 billion range.

8 Q. And how does that measure up to Allegiant's  
9 expectations?

10 A. Well last year was wild. Um, it was reasonably in  
11 line of we're thinking of 20, 22, um -- I guess it all  
12 depends on what timeframe you're asking for my  
13 expectations.

14 Q. Well let me ask a more simple question.

15 You made \$2.3 billion last year, correct?

16 A. That sounds fair.

17 Q. And the year before that, which was a covid year,  
18 you made \$1.7 billion, right?

19 A. Yes.

20 Q. So you increased your revenue by \$600 million?

21 A. Yup.

22 Q. Now if we could just look at Exhibit 706 again, um,  
23 the slide ending in 3229.

24 MS. BANSAL: Slide 706.

25 (On screen.)

1 A. (Looks.)

2 Q. Have you seen this graph before?

3 A. Um, yes.

4 Q. So does this graph show that Allegiant has had  
5 positive pretax margins every year since 2005 with the  
6 exception of 2020?

7 A. Yes.

8 Q. And that percentage of margin is higher than the  
9 rest of the industry?

10 A. Correct.

11 MR. DeRITA: I'm just going to object again on the  
12 leading point that --

13 THE COURT: Well she is, I mean, as I've said  
14 before, I was taught to keep my mouth shut unless  
15 there's an objection. Yes, she's gone right on leading.  
16 Now she has led again. The objection is sustained.

17 Don't lead.

18 MS. BANSAL: Understood, your Honor.

19 THE COURT: I trust you are.

20 Q. What were your third quarter of 2023 financial  
21 results in revenue?

22 A. Boy, this is only a couple of weeks ago, so you'd  
23 think I would remember off the top of my head.

24 We were -- we gained about 1 percent of revenue on  
25 each year-to-year basis. I'm sure you may have the

1 number in front of you. I'm coming up blank.

2 Q. I can bring up -- yes, let me bring up the numbers.

3 MS. BANSAL: Exhibit 703.

4 (On screen.)

5 A. (Looks.)

6 Q. This is the Bates page ending in 3325, and it is the  
7 first sentence going into the second sentence. Where  
8 you're speaking. At the bottom of the page under --

9 A. Oh, the \$565 million in total revenue?

10 Q. Yes. So that was your '23 revenue?

11 A. Yeah.

12 Q. And you see there that you're saying that you're  
13 extremely pleased with the record, correct?

14 A. Correct.

15 Q. Mr. Wells, are you confident in Allegiant's  
16 continued ability to grow?

17 A. Absolutely, yes.

18 Q. And are you confident that you will continue to grow  
19 with the divestiture assets in hand?

20 A. Absolutely.

21 Q. Thank you.

22 MS. BANSAL: Pass the witness.

23 THE COURT: Mr. DeRita, anything further for this  
24 witness?

25 MR. DeRITA: Yes, your Honor.

1 THE COURT: You may.

2

3 REDIRECT EXAMINATION BY MR. DeRITA:

4 Q. So I'd like to start by talking about -- I mean I'm  
5 not going to bring up the exhibit, but we're talking  
6 about the evolution of Allegiant's network, you were  
7 talking about that with defense counsel.

8 One of the slides there, it says at the top of the  
9 page, "A Very Large Niche." Can you explain what that  
10 means for Allegiant's network?

11 A. I'm sorry, may I see the exhibit to know what's  
12 being displayed?

13 Q. Sure. If we go to Exhibit 706, and it's actually I  
14 think it's BUY in your binder. And that would be the  
15 Bates-labeled page ending in 30.

16 A. (Looks.) Okay, the route map. Yes.

17 Q. Yeah, that's right. So at the very top there "A  
18 Very Large Niche." What's meant by that statement?

19 A. In general I think it comes back to the network  
20 strategy of targeting unserved and underserved  
21 opportunities, um, which I think kind of definitionally  
22 describes a "niche," right, something that others are  
23 overlooking that we are eager to serve.

24 Q. And when you say "others," what others are you  
25 referring to?



1 A. The industry probably.

2 Q. You talked about an evolution in the network in  
3 entering larger cities. When entering larger cities, is  
4 Allegiant connecting those larger cities to other larger  
5 cities?

6 A. Historically, um, not so much.

7 Q. And there is a discussion of something called  
8 "Allegiant 2.0."

9 As part of "Allegiant 2.0," has Allegiant  
10 identified routes for potential expansion?

11 A. Um, certainly. Yeah, we've talked about 1400  
12 incremental domestic routes that we believe are valid.

13 Q. And of those 1400, what percentage of those routes  
14 do not face competition?

15 A. It's approximately the same as our network today,  
16 about 75 percent.

17 Q. And going back historically, let's say over the last  
18 5 years, how is the -- if at all, the percentage of  
19 competition that Allegiant faces on its routes changed?

20 A. Our percentage has grown meaningfully since the  
21 beginning of the company. We started with Fresno  
22 California to Las Vegas, Nevada, which was  
23 noncompetitive. And so we've gone from about 0 percent  
24 at the beginning to 25 percent where we are today.

25 Q. So I'm asking it the other way.

1           In the last 5 years -- well Allegiant was founded  
2     in what year?

3     A.   2000, give or take.

4     Q.   Yes, so in the last 5 years, how if at all has the  
5     percentage of routes that Allegiant competes on do not  
6     face competition change, using the 75 percent as a  
7     baseline?

8     A.   It's been roughly flat over that timeframe.

9     Q.   And I just want to make sure that I properly  
10    understood some of the testimony you gave when you were  
11    being questioned by defense counsel.

12           So there was a number that you had given, about 90  
13    percent of routes face a Big 4 competitor. But I just  
14    want to be clear. That 90 percent applies only to the  
15    25 percent of routes that have competition, correct?

16    A.   Correct, the 124.

17    Q.   (Pause.) I'd like to talk a little bit about the  
18    planned fleet that was discussed.

19           I can bring up the Demonstrative if you wish, but  
20    it had said on that Demonstrative with the fleet, um,  
21    that the 2024 planned fleet number was, um, to add 25  
22    incremental planes. Does that sound right?

23    A.   There will be 2 Airbus that go into service as well  
24    as what we expect to be 25 going Maxes, yes.

25    Q.   Okay. So -- what's the current fleet now?

1 A. That approximately 127 in the document.

2 Q. Okay. So what's the expectation for total fleet by  
3 the end of 2024?

4 A. I believe we'll be in the mid 140s taking into  
5 account some of those retirements.

6 Q. Okay. So 127 plus 25 is not mid 140s, correct?

7 A. Correct, because there will be some retirements,  
8 yes.

9 Q. And when you said the 140, is there a finer number  
10 that you can give?

11 A. Not off the top of my head. I can call it 145 for  
12 the sake of a midpoint.

13 Q. When did Allegiant decide to enter the contract with  
14 Boeing?

15 A. Um, I believe it was formally announced in January  
16 of '22, December of '21. But obviously the decision  
17 would have been made ahead of that.

18 Q. When was that decision made, preannouncement?

19 A. Oh, I don't recall exactly. It's somewhere not  
20 terribly far before that.

21 Q. Okay. So that decision was made before the JetBlue,  
22 Spirit transaction was announced, correct?

23 MS. BANSAL: Objection, leading.

24 THE COURT: Sustained on that ground.

25 Q. Was that decision made before the announcement of

1 the Spirit, JetBlue merger?

2 A. I believe so, yes.

3 Q. (Pause.) And you have discussed retirements. Can  
4 you explain when the retirements are expected to take  
5 place?

6 A. They'll generally align with upcoming heavy  
7 maintenance events on these aircrafts. So it will be  
8 somewhere in the 3-year horizon as the aircraft is on a  
9 36-month maintenance cycle.

10 Q. Now going back to the plans for the new aircraft.

11 Did Allegiant have plans to use those planes  
12 regardless or irrespective of the JetBlue, Spirit  
13 merger?

14 A. Sorry, can you maybe rephrase?

15 Q. Yeah, what plans did the -- at the time the order  
16 was made or the decision was made, um, what plans did  
17 Allegiant have to use that fleet that was coming to  
18 order?

19 A. Um, I mean we intended to use them as the work  
20 horses of our network. I apologize. Maybe I'm not  
21 following you exactly.

22 Q. Sure. So at the time the decision was made, how if  
23 at all did the prospect of a JetBlue merger factor into  
24 the potential use of those planes?

25 A. Those are completely distinct features.

1 Q. Okay, there was some talk about, um, switching  
2 topics, potential expansion internationally and two of  
3 the places that were brought up were Latin America and  
4 the Caribbean, and you had mentioned that there were two  
5 things that come up, IT and regulatory, um, points.

6 Can you give some more color on what those are?

7 A. Perhaps at a high level. Any country -- as I  
8 understand it, any country that you choose to enter with  
9 new service has applications that are required likely on  
10 both ends, both the U.S. and whatever the foreign entity  
11 is. And then every country -- and perhaps that's an  
12 overstatement, most countries have different taxes and  
13 information that must be remitted, and would have some  
14 element of the specific development required. I don't  
15 believe that's an Allegiant-specific thing, just in the  
16 industry.

17 Q. And I believe you used the term "constraints" when  
18 describing those things. Has Allegiant found a way to  
19 get over or past those constraints?

20 A. I'm not sure that I remember using "constraints"  
21 for this specifically. However we, um, as a company,  
22 have brought on a third-party vendor, Navataire, to  
23 replace a lot of our back-end systems and with that  
24 comes a lot of international development that we have  
25 been unsuccessful in developing on our first two

1 occasions.

2 Q. Does Allegiant have any concrete plans to expand to  
3 Latin America or to the Caribbean?

4 A. It would be on our longer-term road map. But first  
5 things first, getting across the finish line with our  
6 joint venture, the ATI, and getting our feet wet in  
7 international-scheduled service before, um, moving past  
8 that to other countries.

9 Q. Okay, I'd like to shift topics and talk about the  
10 divestiture assets.

11 I believe you were discussing with defendants  
12 about how you think that the divestiture assets will  
13 increase your ability to compete in those airports, is  
14 that fair?

15 A. Yes.

16 Q. Okay, I'd like to ask you some more questions about  
17 that.

18 I'm going to pull up a document that has been  
19 marked as Exhibit AE.

20 THE COURT: Marked as what?

21 MR. DeRITA: AE. It's going to be passed up.

22 (Passes up.)

23 Q. So this document has red boxes on it because your  
24 counsel has requested that certain portions of it be  
25 redacted. So the portions of your document that have

1 red outlining around them, if I ask about them, just  
2 please be aware that you're not supposed to actually  
3 read them or say them out loud. And they won't be  
4 published as well.

5 A. (Looks.)

6 Q. Okay. After you've taken a second to look through  
7 it, I will ask you about it.

8 A. Sure.

9 MS. BANSAL: I'm going to object, your Honor, this  
10 is beyond the scope.

11 THE COURT: It looks like it's beyond the scope.  
12 What do you say?

13 MR. DeRITA: Well, your Honor, Ms. Bansal had been  
14 asking the witness about plans using the divestiture  
15 assets. This document speaks to the competition between  
16 Allegiant and potential competition between Allegiant at  
17 three divestiture airports. In fact as I just mentioned  
18 when I first started talking about this topic, one of  
19 the things that the witness has testified to is that it  
20 will increase the ability to compete in those airports.  
21 And I believe this document says otherwise.

22 MS. BANSAL: Your Honor, if I may?

23 THE COURT: You may.

24 MS. BANSAL: This document goes well beyond what  
25 we discussed during my examination --

1 THE COURT: Yeah, I think it does. Sustained.  
2 Beyond the scope.

3 (Pause.)

4 THE COURT: Anything else for this witness?

5 MR. DeRITA: Yes. Yes, your Honor.

6 THE COURT: Go ahead.

7 Q. So we had discussed earlier, um, on your direct  
8 examination, about the ways that Allegiant determines  
9 how it will, um, choose its routes, and we had discussed  
10 the amount of -- we had discussed a variety of factors.

11 Would those factors change as a result of  
12 acquiring these divestiture assets?

13 MS. BANSAL: Objection.

14 THE COURT: Grounds?

15 MS. BANSAL: Your Honor, I don't understand the  
16 question.

17 THE COURT: Well, I do.

18 Overruled. You may answer.

19 A. Our plans on how we choose, um, routes would not  
20 change as a result of gaining the divestiture assets,  
21 no.

22 (Pause.)

23 MR. DeRITA: That's all I have, your Honor.

24 THE COURT: Nothing further for this witness,  
25 Ms. Bansal?



1 MS. BANSAL: Your Honor, just one question.

2

3 RECROSS-EXAMINATION BY MS. BANSAL:

4 Q. Mr. Wells, how if at all will the merger impact your  
5 decision whether to exercise your option for the  
6 additional 80 planes?

7 MR. DeRITA: Objection, speculation.

8 THE COURT: Well on that ground, overruled.

9 You may answer.

10 A. It certainly provides more runway for growth in  
11 three airports where we're currently constrained. I  
12 strongly believe in our network runway, um, in all  
13 situations, but having more open opportunities is  
14 obviously a good thing for us.

15 Q. So it's a factor that you --

16 THE COURT: I thought you said one question?

17 (Laughter.)

18 MS. BANSAL: Apologies.

19 THE COURT: Go ahead.

20 Q. So it is a factor that you may consider, correct?

21 MR. DeRITA: Objection, leading.

22 THE COURT: It is leading.

23 Q. Mr. Wells, is that a factor that you will  
24 consider?

25 A. The number of opportunities we have that, um, have

1 freed up constraints is certainly something we would  
2 consider.

3 Q. Okay, thank you, Mr. Wells.

4 THE COURT: Nothing further for this witness,  
5 Mr. DeRita?

6 MR. DeRITA: Nothing further, your Honor.

7 THE COURT: You may step down. Thank you.  
8 Call your next witness.

9 MR. DUFFY: Yes, your Honor, we'll be calling  
10 Mr. Gale and we'll just get him from outside.

11 THE COURT: He may be called.

12 (Pause.)

13 (MARK GALE, sworn.)

14 THE COURT: Mr. Amlin, you may proceed.

15 MR. AMLIN: Your Honor, Don Amlin for the United  
16 States. Plaintiffs call Mark Gale of the Broward County  
17 Aviation Department.

18 THE COURT: He's been sworn.

19

20 \*\*\*\*\*

21 MARK GALE

22 \*\*\*\*\*

23

24 DIRECT EXAMINATION BY MR. AMLIN:

25 Q. Would you please state your name for the record and

1 spell it.

2 A. Sure. My first name is Mark, M-A-R-K, middle  
3 initial E, last name is Gale, G-A-L-E.

4 Q. Mr. Gale, there are binders in front of you which I  
5 may refer you to at the appropriate time. But I'd like  
6 to begin by asking you some background questions about  
7 your employer, position, and history in the industry.

8 For whom do you currently work?

9 A. I work for Broward County government, Broward  
10 County, Florida.

11 Q. And where is Broward County located?

12 A. In Southern Florida.

13 Q. And what agency within Broward County do you work  
14 for?

15 A. The Broward County Aviation Department.

16 Q. And how long have you worked there?

17 A. Um, approximately 7-and-three-quarters years, again  
18 in March of 2016.

19 Q. Is it okay for me to refer to the Broward County  
20 Aviation Department as "DCAD" during this examination?

21 A. It is.

22 Q. And before working for DCAD, where did you work?

23 A. The City of Philadelphia, the Philadelphia National  
24 Airport.

25 Q. And how long did you work there?

1 A. Um, nearly 30 years.

2 Q. What was your last position at the Philadelphia  
3 International Airport before --

4 A. I was CEO. I was the CEO or the Chief Executive  
5 Officer.

6 Q. And what's your current position at DCAD?

7 A. Chief Executive Officer and Director of Aviation.

8 Q. And what are your responsibilities as CEO and  
9 Director of Aviation?

10 A. I'm essentially responsible for all matters that  
11 relate to our two airports, um, both the Fort Lauderdale  
12 Hollywood International Airport, and as well as our  
13 general aviation reliever, North Perry Airport.

14 THE COURT: The second is what, "general  
15 aviation"?

16 THE WITNESS: General Aviation Reliever Airport.  
17 We only handle general aviation aircraft traffic. It  
18 helps move some of those smaller private airplanes away  
19 from the large international airport.

20 Q. Is it okay for me to refer to Fort Lauderdale and  
21 Hollywood International Airport as "the airport" or just  
22 "Fort Lauderdale" during this examination?

23 A. It is.

24 Q. Thank you.

25 Approximately how many passengers does the Airport

1     serve each year?

2     A.   Um, in 2023, this year, we anticipate approximately  
3     35 million.

4     Q.   In your role as CEO and Director of Aviation at the  
5     Airport, are you familiar generally with the operations  
6     of the various commercial airlines who fly from the  
7     Airport?

8     A.   I am.

9     Q.   And are you also familiar with the gate leasing and  
10    assignment contracts and policies of the Airport?

11    A.   Generally I am, yes.

12    Q.   Are you responsible for selecting which airlines  
13    acquire the right to operate at available gates at the  
14    Airport?

15    A.   I interact with my team on the leasing of gates to  
16    airlines based upon availability.

17    Q.   And does your team make the ultimate selection as to  
18    who is awarded a leasing right?

19    A.   We do.

20    Q.   So if gates become available at the Airport upon the  
21    closing of JetBlue's acquisition of Spirit, will you  
22    personally be involved in selecting who gets the gates?

23    A.   I would be involved in the gate process, yes.

24    Q.   Would you be the primary decision-maker?

25    A.   Um, possibly. I think there would be, um, potential

1 questions that would need to be answered relative to  
2 compliance with let's say our Airport Competition Plan  
3 that we have on file with the FAA.

4 Q. I'm going to focus my examination today exclusively  
5 on the purported divestitures at the Fort Lauderdale  
6 Airport and your role in the process.

7 Now at Fort Lauderdale, with regard to gates, do  
8 airlines own any gates at Fort Lauderdale?

9 A. They do not.

10 Q. Who owns the gates?

11 A. The gates are owned by Broward County, the owner and  
12 operator of the Airport.

13 Q. So the airlines don't own the gates. Do the  
14 airlines lease the gates from DCAD?

15 A. They do.

16 Q. To what extent can an airline sell or transfer its  
17 lease right to operate from a particular gate at the  
18 Airport to another airline?

19 A. Under our terminal building leases, the airlines do  
20 not have the right to assign or sublet or any other way  
21 obligate a gate that is currently underneath their  
22 preferential use control, at least not without the  
23 express written consent by the County.

24 Q. Now you mentioned the terminal building lease  
25 agreement, I think. Is that a contract with the various

1 airlines between those airlines and DCAD?

2 A. Yeah, we refer to it as the "Terminal Building Lease  
3 Agreement" or a "TBLA."

4 Q. And do those various TBLAs memorialize the  
5 prohibition on airlines selling or leasing gates?

6 A. It does.

7 Q. Okay, let's turn to that then and let's pull up  
8 Exhibit AIE.

9 A. (Looks.)

10 Q. Mr. Gale, if you go about halfway through this stack  
11 to the page ending in Bates number Dash 4323, there's a  
12 document titled "Signatory Terminal Building Lease  
13 Agreement Between Broward County and JetBlue Airways  
14 Corp." with an original stamp on it.

15 Do you recognize this document, sir?

16 A. I don't know if I've ever seen this original  
17 document, but that appears to be, um, the cover page for  
18 the agreement between JetBlue and Broward County, yes.

19 Q. And when you say the "agreement," do you mean the  
20 TBLA?

21 A. The TBLA, correct.

22 Q. And did JetBlue and DCAD each sign this agreement?

23 A. There is an executed copy between the two parties,  
24 yes.

25 Q. Would you turn to Pages 40 and 41, and those would

1 correspond to Bates number Dash 4364 to Dash 4365.

2 MS. WRIGHT: Your Honor, we object to the use of  
3 this exhibit with this witness.

4 MR. AMLIN: Your Honor, I'm continuing to lay my  
5 foundation, I have a few more questions, and then I can  
6 address Ms. Wright's objection at that time. If that's  
7 all right with you?

8 THE COURT: Well I don't know what her objection  
9 is?

10 MS. WRIGHT: Foundation. This is not a document  
11 that was produced by the County, it's a document that  
12 was produced by JetBlue, and it's an internal JetBlue  
13 document.

14 MR. AMLIN: And, your Honor, I intend to use only  
15 the part of this document which was used during his  
16 deposition and as produced by JetBlue, this is a  
17 fully-executed contract between the Broward County  
18 Aviation Department and JetBlue, and Mr. Gale, as I will  
19 show, is aware of the contents and there is sufficient  
20 foundation.

21 THE COURT: Well that's sufficient to allow you to  
22 go ahead and ask some more foundation questions.

23 MR. AMLIN: Thank you, your Honor.

24 And if we could turn on the screen, if it's  
25 possible to put on Bates ending in 4364.



1 THE COURT: Yes.

2 (On screen.)

3 Q. Is this the page that has -- these two pages have  
4 the signatures of DCAD and JetBlue for this contract, is  
5 that correct?

6 A. They appear to be the pages from the TBLA. I  
7 recognize some of the names in the signatures.

8 Q. And I guess this is the original from 2011, so you  
9 weren't there, but there have been amendments to this  
10 contract and this version has it.

11 MR. AMLIN: So if we turn to the page ending in  
12 Bates number 4396, and I'll wait for that to come on the  
13 screen as well, 4396 now.

14 (On screen.)

15 Q. So this appear to be the "Ninth Amendment Edition to  
16 the Signatory Terminal Building Lease Agreement." Is  
17 that right, Mr. Gale? Look at the top.

18 A. Yes, it appears to be the Ninth Amendment.

19 Q. If we turn to the page ending in Bates Number 4398,  
20 just a few pages down. (On screen.)

21 Did you personally sign this amendment, which is  
22 part of this exhibit, um, as the amendment, the Ninth  
23 Amendment to the TBLA?

24 A. That is my signature, yes.

25 Q. If we go to the next page ending in 4399.

1 A. (Turns.)

2 Q. Do you recall this being JetBlue's signature to the  
3 Ninth Amendment to the TBLA?

4 A. It appears to be the signature. I recognize the  
5 name of the Vice-President above.

6 Q. And in signing this amendment, did you review the  
7 original contract along with the amendments?

8 A. I generally review all of the documents when I'm  
9 signing an amendment that needs to be approved.

10 Q. Thank you.

11 MR. AMLIN: Your Honor, plaintiffs offer AIE into  
12 evidence as Exhibit 72.

13 MS. WRIGHT: Objection.

14 THE COURT: Well this is more than the agreement,  
15 AIE?

16 MR. AMLIN: It has an additional agreement, but  
17 I'm only going to talk about the --

18 THE COURT: No, but you offered the whole thing  
19 and you laid the foundation for the agreement and its  
20 amendments.

21 Now are you offering the agreement and its  
22 amendments?

23 MR. AMLIN: I'm offering the agreement and its  
24 amendment and not any of the other material.

25 THE COURT: And so where does that -- so we're

1 clear for the record, where does that begin?

2 MR. AMLIN: That begins with -- yeah, the first  
3 page that I mentioned earlier --

4 THE COURT: No, my question is different.

5 MR. AMLIN: -- that begins with the page ending in  
6 Bates number 4323 and extends through the remainder of  
7 the document ending in 4418.

8 THE COURT: Is 4323 the beginning of the  
9 agreement, the first page of the agreement?

10 MR. AMLIN: Yes, your Honor, that's the one that  
11 we brought up originally that has the original stamp and  
12 has the signatory terminal --

13 THE COURT: Thank you.

14 There's no objection to that?

15 MS. WRIGHT: So the proposal then, that AIE would  
16 be amended to begin at --

17 THE COURT: Not amended, I'm admitting those  
18 Bates-numbered of -- beginning at that Bates number.

19 MS. WRIGHT: Beginning at that.

20 THE COURT: Yes. No objection to that?

21 MS. WRIGHT: No objection to AIE being admitted  
22 beginning at Bates page ending in 4323.

23 THE COURT: So ordered.

24 And it will be exhibit?

25 MR. AMLIN: 782, your Honor.

1 THE COURT: 782?

2 MR. AMLIN: Yes, sir.

3 THE COURT: Exhibit 782 in evidence.

4 (Exhibit 782, marked.)

5 Q. Mr. Gale, let's turn to the page of the document  
6 with the Bates number ending in 4348. So I think, for  
7 you and the Court, this should have a red tab at the  
8 top, which is in your binder as well, or you could read  
9 it from the screen, by the way.

10 A. (Looks.)

11 Q. Focusing on Article 10 titled "Assignment,  
12 Subletting, and Ground Handling," is this a standard  
13 clause in DCAD's agreements with airlines who operate at  
14 the Airport?

15 A. It is a standard clause for an agreement that  
16 anybody who executes the terminal building lease  
17 agreement, the TBLA.

18 MR. AMLIN: Let's expand Section 10.1 on the  
19 screen, please.

20 (On screen.)

21 Q. So Section 10.1 of the agreement prohibits JetBlue  
22 or Spirit from subletting gates to another airline  
23 without prior written consent?

24 MS. WRIGHT: Objection.

25 THE COURT: Well it says what it says. His

1 statement is supererogatory. I can read.

2 (Pause.)

3 Q. In Section 10.1 of that prohibition, it uses the  
4 term "Leased Premises." Is it your understanding that  
5 "leased premises" includes gates at the Airport?

6 MS. WRIGHT: Objection.

7 MR. AMLIN: Your Honor, he is familiar with the  
8 contract and --

9 THE COURT: Yes, he is, and do you --  
10 What's the objection?

11 MS. WRIGHT: Leading.

12 THE COURT: Well at this level I'll allow it.  
13 Does it include gates?

14 THE WITNESS: It does, your Honor.

15 MR. AMLIN: Thank you.

16 Q. And do you recall sending this particular language  
17 to JetBlue recently?

18 A. Um, can you define "recently"?

19 Q. Within the past couple of years.

20 A. Um, yes, we sent a representative of JetBlue a  
21 reminder of this particular clause within our TBLA.

22 MR. AMLIN: Let's pull up Exhibit EK.

23 A. (Looks.)

24 Q. If you'd turn to that in your binder or look on the  
25 screen.

1 A. (Turns.)

2 Q. Let's focus on your e-mail at the bottom of this  
3 page and with the Bates number ending in Dash 803.

4 Who is Mr. Costello?

5 A. Mr. Costello is one of the corporate real estate  
6 representatives who I would deal with on a regular basis  
7 with JetBlue, who I believe is no longer with the  
8 company right now.

9 Q. So he's a former JetBlue employee?

10 A. A former JetBlue employee as I understand it, yes.

11 Q. When was this e-mail sent?

12 A. January 27th of this year, 2023.

13 Q. Was that after JetBlue announced its agreement to  
14 purchase Spirit?

15 A. I believe it was.

16 Q. And what are the three attachments you reference in  
17 your e-mail?

18 A. Um, the TBLA, which we've just discussed,  
19 particularly Article 10. The FAA's letter recommending  
20 the development of a policy when announcing gate  
21 availability. We recently had submitted as a  
22 requirement, um, an Airport Competition Plan to the FAA  
23 because we had triggered, um, a requirement based upon  
24 two airlines exceeding 50 percent of market share. And,  
25 um, we were letting them know that that was something

1 the FAA pointed out to us. That while it wasn't  
2 included in our original submission, that they  
3 recommended that we put that in any subsequent version  
4 of our Airport Competition Plan. And the last was our  
5 response to the FAA, um, recommending that we were going  
6 to develop that said policy.

7 MR. AMLIN: Your Honor, plaintiffs offer Exhibit  
8 EK into evidence as Exhibit Number 73.

9 THE COURT: Any objection?

10 MS. WRIGHT: No objection, your Honor.

11 THE COURT: EK is admitted, 783 in evidence.

12 (Exhibit 783, marked.)

13 Q. Now what is the reason you're sending this e-mail  
14 and the attachments to Mr. Costello?

15 A. Well there were discussions that Mr. Costello and I  
16 had relative to what JetBlue's ability was at that time  
17 to enter into -- or potentially enter into an agreement  
18 with another airline whereby they would either assign or  
19 sublet those gates to the airline potentially without  
20 our expressed written approval.

21 Q. And which other airline was at issue, do you recall?

22 A. At that time there was no specific airline, as I  
23 recall, it was later identified through some  
24 announcements of, um, the possibility of entering into  
25 an agreement with Allegiant Airlines.

1 MR. AMLIN: Let's turn to the top of Page 3 of  
2 this document, which has a Bates number ending in Dash  
3 805. This is the first attachment.

4 (On screen.)

5 Q. What is this attachment that you sent to  
6 Mr. Costello?

7 A. That is the page-referencing Article 10 of the TBLA,  
8 the one that we discussed just a few minutes ago.

9 Q. And did you send the entire TBLA or just this page?

10 A. I don't recall. I think I may have only sent that  
11 particular page, um, because that was most pertinent to  
12 the conversation that was ongoing at that time.

13 Q. And at least with regard to Article 10, this is the  
14 same language that we had discussed previously, correct?

15 A. It appears to be, yes.

16 Q. And at the time of this e-mail, and also currently,  
17 is this Section 10.1 provision prohibiting the transfer  
18 of gates without the County's prior written consent in  
19 effect?

20 A. Yes.

21 Q. Has Broward County given written consent to JetBlue  
22 -- your Honor, strike that.

23 Has Broward County given consent to JetBlue or  
24 Spirit to transfer its gates to another airline?

25 A. Not at this time, that I'm aware of.



1 MR. AMLIN: Let's turn back to Page 4 of this  
2 exhibit with the Bates number ending in Dash 806.

3 A. (Turns.)

4 Q. Mr. Gale, what is this document?

5 A. This is a letter we received from the FAA on the  
6 review of the competition plan that we had submitted for  
7 their review and approval identifying that we were now,  
8 quote, a "covered airport" because of the triggering  
9 event that I mentioned earlier. And that was our first  
10 submission of a competition plan to the FAA.

11 Q. At the bottom of the first page continuing on to the  
12 second page of this letter, there's a paragraph that  
13 appears to be highlighted.

14 Do you recall whether you highlighted this  
15 paragraph on sending the documents to Mr. Gale?

16 A. You mean to Mr. Costello?

17 Q. To Mr. Costello, yes.

18 A. Yes, I believe I did highlight that to bring his  
19 attention to it, which was again the -- I think the  
20 second attachment and the second reference in the e-mail  
21 that I had sent in April.

22 Q. And with regard to this highlighted language,  
23 specifically the mention of "developing a formal policy  
24 for announcing gate availability, reporting aircraft  
25 available and potential new entrants and existing

1 tenants," what do you understand this to mean?

2 A. It was the FAA's recommendation that the Airport,  
3 upon coming into receipt of any additional gates, um,  
4 including gates that might be recaptured from an airline  
5 that was no longer utilizing them on a preferential use  
6 basis, that we announce the availability of those gates  
7 in an accessible place, most likely our website, um, so  
8 that other potential airlines that might have an  
9 interest in serving our airport would be aware of those  
10 gates.

11 MR. AMLIN: Now let's turn to the last two pages  
12 of this document with Bates numbers ending in 0810  
13 through 0811.

14 A. (Turns.)

15 Q. Mr. Gale, what is this letter?

16 A. This was a response, um, to some increase that the  
17 FAA had placed to us, in this case Mr. Craven with the  
18 FAA, stating that the review of their -- of our  
19 competition plan had been completed. They made a few  
20 inquiries, in one case to a description of, um, our new  
21 Terminal 5 now under construction. Also wanting to  
22 understand how the gates would be allocated. And there  
23 were some questions about how Terminal 5 came to be a  
24 development that we wanted to undertake. We had  
25 discussed the fact that we had put that in front of our

1 airline community to vote on and all the airlines voted  
2 on it in the affirmative for us to move forward with  
3 that project. I think we also had identified that the  
4 gates in the terminal facility would be capable of  
5 handling pretty much any airline that we would put into  
6 that concourse when it's completed.

7 Q. And again in the last paragraph of the second page  
8 there's some yellow highlighting. Did you highlight  
9 that paragraph when sending this document to  
10 Mr. Costello?

11 A. I believe I did.

12 Q. Why did you highlight it?

13 A. Again to bring the attention that the FAA had made a  
14 recommendation to us and that we had formally responded  
15 to the FAA that we would be adopting that  
16 recommendation, and looking to formalize that procedure,  
17 and we would probably include it within our next  
18 scheduled submission. Which unless there was another  
19 triggering event, we would be required to provide an  
20 update to that competition plan 18 months after the  
21 approval of the first submission.

22 Q. So to be clear, this is you, on behalf of DCAD,  
23 accepting the FAA's recommendation to advertise the  
24 availability of gates to all interested parties?

25 MS. WRIGHT: Objection, leading.

1 THE COURT: Sustained on that ground.

2 Q. To what extent is this highlighted language  
3 indicative of DCAD accepting the FAA's proposal  
4 regarding advertising the availability of the gates?

5 MS. WRIGHT: Same objection.

6 THE COURT: And the same ruling.

7 MR. AMLIN: I'll move on, your Honor.

8 Q. You had mentioned earlier that part of it was you  
9 accepting the FAA's recommendation.

10 Is that currently the policy in effect right now,  
11 sitting here today, on November 15th, 2023?

12 A. It is a policy that we are following and we include  
13 the announcement of any gates on our website. It has  
14 not been submitted to the FAA as a formal change to our  
15 Airport Competition Plan at this time.

16 Q. And you've made -- and have you made JetBlue aware  
17 of that policy?

18 A. I believe they're aware of it. I personally haven't  
19 called them and said "This is the policy, we've  
20 referenced this in these e-mails," that it was our  
21 intent to follow the FAA's recommendation on this  
22 particular matter. We have again reiterated to JetBlue,  
23 um, on other discussions and occasions, that we believe  
24 they need our express written consent before entering  
25 into any type of arrangement with another airline for

1 the gates that are currently being used by them on a  
2 preferential use basis.

3 Q. And to what extent would DCAD provide express  
4 written consent without opening up the availability of  
5 the gates to other interested airlines?

6 A. I'm not sure that I understand the question.

7 Q. To what extent would DCAD provide express written  
8 consent for JetBlue to transfer gates without first  
9 advertising the availability of the gates to other  
10 interested airlines?

11 MS. WRIGHT: Objection, leading.

12 THE COURT: No, overruled.

13 A. I'm not sure that we would. We would have to take a  
14 look at what the specific request was for how many  
15 gates. We haven't had any, um, immediate request from  
16 airlines that they want a gate or additional gates, and  
17 -- well we haven't had any new airlines that said "We  
18 want to come in right now, we want a gate." We're  
19 always in discussions with airlines about the potential  
20 new service to our airport, but nobody in the U.S. said  
21 "We want a gate right now." We have not denied access  
22 to anybody at this particular point in time. But based  
23 upon the recommendation to the FAA and our response to  
24 them, it would have been -- it would be our position  
25 that the gate availability would need to be announced

1 and then we would move through the process.

2 Q. To what extent are the gates that we're talking  
3 about available currently right now?

4 THE COURT: I didn't catch the question? It's my  
5 fault. Ask it again.

6 Q. The gates that we're talking about that are the  
7 subject of the potential divestitures, to what extent  
8 are they currently available?

9 MS. WRIGHT: Objection.

10 THE COURT: Overruled.

11 A. I'm not sure which gates are actually being  
12 referenced. We have seen and heard the potential of an  
13 arrangement that might make gates available to Allegiant  
14 Airlines, potentially up to 5 gates. JetBlue currently  
15 has preferential use lease arrangements on a number of  
16 different gates, 14 to be exact, at FLL. Some of those  
17 gates are for domestic use only, some are for  
18 international as well as domestic use. We would want to  
19 understand what it is that -- specifically which gates  
20 JetBlue would be looking to divest. And I do not have  
21 that information.

22 Q. And is JetBlue currently using all 14 of the gates  
23 to which it is currently allocated?

24 A. They are.

25 MR. AMLIN: Let's bring up Exhibit ATO.

1 (On screen.)

2 Q. This is a press release from JetBlue dated September  
3 11th, 2023, titled "JetBlue and Allegiant announced  
4 divestiture agreement in connection with JetBlue's  
5 combination with Spirit." This press release is also  
6 available currently on JetBlue's website.

7 Mr. Gale, have you seen this press release before?

8 A. It's just coming up now.

9 Q. It's also in your binder as well.

10 MR. AMLIN: If we could flip it on the screen to  
11 the second page.

12 (On screen.)

13 MS. WRIGHT: Your Honor, we object to these  
14 documents per se.

15 MR. AMLIN: Your Honor, it's a party admission,  
16 it's a press release from JetBlue.

17 THE COURT: It appears that it is.

18 MS. WRIGHT: Mr. Gale is not a party witness.

19 THE COURT: He's not a party witness. It's your  
20 document. Overruled.

21 Q. Mr. Gale, do you have any reason to believe this  
22 isn't an authentic printout of the press release that  
23 currently appears on JetBlue's website?

24 MS. WRIGHT: Objection.

25 MR. AMLIN: Your Honor, I'm asking if he has

1 reason to believe it's not authentic.

2 THE COURT: Well let's not horse around.

3 Do you -- Ms. Wright, do you deny the authenticity  
4 of this document?

5 MS. WRIGHT: We do not, your Honor.

6 THE COURT: All right, so it's an admission. It's  
7 admitted. Let's get to the substance.

8 And we'll have number?

9 MR. AMLIN: 784, your Honor.

10 THE COURT: All right, 784 in evidence.

11 (Exhibit 784, marked.)

12 Q. Now let's go to the very last sentence of the last  
13 paragraph of this page, which is Page 2 of the exhibit  
14 ending in Dash 875. And this reads, quote: "JetBlue  
15 has agreed to relinquish up to 5 gates at Fort  
16 Lauderdale to the Broward County Aviation Department.  
17 We'll work closely with the Department to facilitate  
18 Allegiant's ULCC growth at Fort Lauderdale using these  
19 gates." End quote.

20 This uses the term "relinquish." What is your  
21 understanding of what "relinquish" means in this  
22 context?

23 MS. WRIGHT: Objection.

24 THE COURT: No, he can give us his understanding.

25 A. In my opinion the term "relinquish" would indicate



1     that while JetBlue is making effective use of 14 gates,  
2     14 preferential-use gates, that the return of up to 5 of  
3     these preferential gates would be coming back to the  
4     County, um, for potential utilization by one or more  
5     other airlines.

6     Q. Now to what extent have you or anyone else at DCAD  
7     informed JetBlue, Spirit, or Allegiant, that you will  
8     work with JetBlue to, quote, "facilitate Allegiant's  
9     ULCC growth at the Airport using these gates"?

10     MS. WRIGHT: Objection.

11     MR. AMLIN: By the press release though --

12     THE COURT: Now just a moment. If I need  
13     argument, I'll ask for it. She's objecting that you're  
14     leading. She didn't state it, but you're obviously  
15     leading.

16     Have you read this press release?

17     THE WITNESS: I have, your Honor.

18     THE COURT: Have you talked about these matters at  
19     all with JetBlue as of today?

20     THE WITNESS: I have had conversations with  
21     JetBlue to again, um, reiterate what we believe the  
22     position is relative to gates that become available. In  
23     fact they are the property of the County. And that  
24     while under the terms of the TBLA or the building lease,  
25     they are fully within their rights to submit a request

1 to me for our review for the assignment or consent. I  
2 believe they understand that. But to date we do not  
3 have a request for them to assign.

4 THE COURT: And that's how they stand today?

5 THE WITNESS: That's correct.

6 THE COURT: All right.

7 Q. To what extent could some or all of these gates be  
8 awarded to American, Delta, or United?

9 MS. WRIGHT: Objection.

10 THE COURT: Why is that germane?

11 MR. AMLIN: Why is this germane, your Honor? The  
12 parties have come here representing that it's a done  
13 deal that these gates are --

14 THE COURT: No, no, it's pretty clear that it's  
15 not, and they don't represent it as a done deal here.  
16 One imagines there are regulatory issues. And you're  
17 absolutely right to bring them to the attention of the  
18 Court. But speculation is -- I'm going to sustain it.

19 MR. AMLIN: Your Honor, can I be heard on one more  
20 point on this?

21 THE COURT: You may.

22 MR. AMLIN: Mr. Gale has testified that he's a  
23 part of this process and also this press release that,  
24 um, says that JetBlue is going to work closely to  
25 facilitate the ULCC role. And I'm asking Mr. Gale, in

1 his role in deciding who may get these gates, whether it  
2 may go to a non --

3 THE COURT: Well you didn't ask that, did you?

4 Q. Mr. Gates, in your role in overseeing the  
5 availability of awarding the available gates to  
6 interested parties, to what extent could these gates be  
7 awarded to a legacy carrier such as American, Delta, or  
8 United?

9 MS. WRIGHT: The same objection.

10 THE COURT: No, it's not leading. And I'm going  
11 to allow it.

12 A. It's been our position that the gates would revert  
13 back to the County for an announcement of availability  
14 and that, um, our view I believe at the County has been  
15 that any airline, including new entrants and/or  
16 incumbents, whether they be, quote, "legacy," unquote  
17 airlines, would be permissible to submit interest on  
18 those gates. I think that, um, the position that  
19 JetBlue in our conversations is that -- in order to  
20 continue to promote, um, competition, particularly  
21 amongst low-fare carriers, that it would make more sense  
22 if those gates went to low-fare carriers, um, low-cost  
23 carriers like Allegiant.

24 Q. And in making your decision, to what extent is it  
25 relevant that JetBlue has entered into an agreement with

1 Allegiant concerning these gates?

2 A. Um, again the County's position is that JetBlue is  
3 not in a position to assign, um, or in any other way  
4 sublet the utilization of those gates or any leased  
5 premise at our airport without our expressed written  
6 consent, and that has not been awarded by the County at  
7 this point in time.

8 Q. Thank you, Mr. Gale.

9 MR. AMLIN: I pass the witness.

10 THE COURT: All right.

11

12 CROSS-EXAMINATION BY MS. WRIGHT:

13 Q. Good morning, Mr. Gale.

14 A. Good morning.

15 Q. Mr. Gale, airports are major economic engines for  
16 communities, correct?

17 A. I believe that to be correct, yes.

18 Q. And that's true for Fort Lauderdale Airport in South  
19 Florida, correct?

20 A. Absolutely correct.

21 Q. Is it right that Fort Lauderdale Airport's annual  
22 economic impact is billions of dollars?

23 MR. AMLIN: Objection, your Honor, this is beyond  
24 the scope. Mr. Gale is not on defendants' witness list  
25 and he's --

1 THE COURT: Please. Please. Please. If I want  
2 argument, I'll ask for it.

3 Since you object that it's beyond the scope, and  
4 so please don't lead the witness. He's objecting on  
5 that basis. But you may inquire.

6 MS. WRIGHT: Thank you, your Honor. And just for  
7 clarity, Mr. Gale is not a defense witness, so this  
8 isn't cross-examination.

9 THE COURT: I understand it is. But, um, as I  
10 understand the rule, they called the witness, you get to  
11 cross-examine -- under the federal rules you get to  
12 cross-examine him as to everything that they've covered.  
13 When you go beyond the scope, as has happened frequently  
14 in this case, on objection you're supposed to take him  
15 on direct. I think that's how the rule works.

16 MS. WRIGHT: Understood. Thank you, your Honor.

17 THE COURT: Yeah.

18 Q. And, Mr. Gale, Fort Lauderdale Airport strives to be  
19 South Florida's airport of choice, correct?

20 A. That's correct.

21 Q. And does Fort Lauderdale Airport strive to provide  
22 global connectivity at a low cost and with an  
23 exceptional guest experience?

24 MR. AMLIN: Objection, your Honor.

25 THE COURT: Yes, you are leading the witness.

1 Don't lead the witness.

2 Q. Mr. Gale, you mentioned earlier, in response to  
3 questioning by the government, the construction of  
4 Terminal 5, correct?

5 A. Correct.

6 Q. And did Fort Lauderdale Airport recently break  
7 ground on the construction of Terminal 5?

8 A. We did.

9 Q. And when Terminal 5 is open, how many gates will  
10 Fort Lauderdale Airport have available?

11 A. There are 5 gates in Terminal 5. If the question is  
12 how many gates will the total airport have at that point  
13 in time? It will be 71.

14 Q. And with 71 gates, how many million passengers can  
15 Fort Lauderdale Airport serve?

16 A. Our projections are that we would be able to serve  
17 approximately 21 to 22 million employments annually. So  
18 if you double that for employments and deployments,  
19 roughly 44 million approximately.

20 Q. Mr. Gale, earlier you mentioned the competition  
21 plan, so let's look at the Exhibit 14 in your binder  
22 that we handed up to you, and that's a copy of the  
23 competition plan. And there's a yellow tab, a Post-It  
24 note, that starts the color version of that exhibit. I  
25 guess it's easier to view it in color.

1 A. (Looks.)

2 Q. Mr. Gale, does Fort Lauderdale Airport monitor gate  
3 usage daily?

4 A. We monitor the gate utilization through resource  
5 management tools, my team does, in our airport  
6 operations database, and those analyses are taken into  
7 consideration when it comes time to review the  
8 utilization of the gate on an annualized basis to see  
9 whether an airline retains its preferential use rights  
10 on that gate.

11 Q. And does the airport work closely with carriers to  
12 accommodate their flights?

13 A. We do. Very closely.

14 Q. And does your team work hard to accommodate new  
15 entrants at the airport?

16 A. We do. I think my team does an excellent job in  
17 that regard.

18 Q. So let's look in Exhibit 14 at the page Bates-ending  
19 4595. We're looking for Section 1-5.

20 A. (Looks.)

21 Q. Let me know when you're there, Mr. Gale.

22 A. 1-5. Uh-huh.

23 Q. Okay. When the County submitted this competition  
24 plan to the FAA in May 2022, there had been no access  
25 complaints at Fort Lauderdale Airport within the prior

1 12 months, correct?

2 A. That is correct.

3 Q. And the County told the FAA that Fort Lauderdale had  
4 been able to accommodate all carriers that had requested  
5 access in the prior 12 months, is that right?

6 A. Yes, that's correct.

7 Q. And in fact in the entire time that you've been at  
8 Fort Lauderdale Airport since March 2016, you're not  
9 aware of any new entrant who has been denied access to  
10 the airport, correct?

11 A. I am not aware of --

12 MR. AMLIN: Objection, your Honor.

13 THE COURT: Ground?

14 MR. AMLIN: Scope and also the --

15 THE COURT: Oh, no, you went into that. So, um --

16 MR. AMLIN: Yes, your Honor.

17 THE COURT: Their regulatory stance here and  
18 interaction both with the FAA and airlines, as a  
19 regulatory matter, I think is within the scope. Just  
20 for -- she may have the question in that form. But  
21 please state it again.

22 MS. WRIGHT: Thank you.

23 Q. In the entire time, Mr. Gale, that you've been at  
24 Fort Lauderdale Airport, this is March 2016, you're not  
25 aware of any new entrant who has been denied access to



1 the airport, is that right?

2 A. I am not.

3 Q. And more recently, Mr. Gale, Fort Lauderdale Airport  
4 has been able to accommodate Avelo, a new ULCC, correct?

5 A. Correct.

6 Q. And Fort Lauderdale Airport has been able to  
7 accommodate Flair, a ULCC operating out of Canada?

8 A. Correct.

9 Q. And just this year Fort Lauderdale Airport has been  
10 able to accommodate three new international carriers, El  
11 Al from Israel, Porter Airlines from Canada, and Bermuda  
12 Air from Bermuda, is that correct?

13 A. That is correct.

14 Q. Mr. Gale, has Fort Lauderdale also been able to  
15 accommodate its existing carriers who want to start new  
16 routes?

17 A. Existing carriers, um, is the question in terms of  
18 expansion?

19 Q. Yes, let me ask it again.

20 So has Fort Lauderdale been able to accommodate  
21 its existing or incumbent carriers who are looking to  
22 expand some new routes from Fort Lauderdale?

23 A. We have been challenged to accommodate growth of  
24 certain carriers, that is primarily one of the reasons  
25 for the development of Terminal 5, largely requested,

1 um, by JetBlue and Spirit years ago, but supported, as I  
2 said, by other airlines, through their vote on our  
3 capital projects. And we've recently completed a, um,  
4 master plan forecast for the airport which identifies  
5 significant development improvements throughout the  
6 airport over the course of the next 20 years to  
7 accommodate future growth.

8 Q. So, for example, Allegiant is an existing carrier at  
9 Fort Lauderdale Airport, correct?

10 A. That is correct.

11 Q. And Allegiant will be starting two routes from Fort  
12 Lauderdale this month, one to Nashville and one to Cedar  
13 Rapids, is that right?

14 A. I believe that is correct, yes.

15 Q. And Allegiant currently has how many preferential  
16 gates at Fort Lauderdale Airport?

17 A. I believe Allegiant has two right now.

18 Q. (Pause.) All right. Mr. Gale, I believe you  
19 testified earlier that the FAA has approved your  
20 competition plan, correct?

21 A. That is correct.

22 Q. So let's look in Exhibit 14 in the competition plan  
23 at the page with the Bates number ending in 4593.

24 A. (Looks.)

25 Q. And if you look at the introduction in that first

1 paragraph, Mr. Gale, do you continue to believe what you  
2 told the FAA here, that "Fort Lauderdale plays an  
3 integral role in having to meet South Florida's regional  
4 demand for air travel service"?

5 A. I do.

6 Q. And looking further down in this paragraph. Do you  
7 continue to believe that "Fort Lauderdale is a key  
8 member of the nation's airport system providing  
9 efficient operations, low fares, and high levels of  
10 safety, security, and service for its passengers,  
11 communities, and stakeholders"?

12 A. I do.

13 Q. All right, let's turn now to Section 4 of the  
14 competition plan, in Bates 4599. (On screen.)

15 A. (Turns.)

16 Q. Mr. Gale, is it still accurate that Broward County  
17 wants to ensure the equitable treatment of all carriers?

18 A. Absolutely, yes.

19 Q. And is it still accurate that the County uses a  
20 schedule submission policy to ensure that the County  
21 manages the demand for air service responsibly?

22 A. It is accurate, yes.

23 Q. And a carrier that's operating at Fort Lauderdale  
24 Airport must follow the schedule submission policy so  
25 "no one carrier has a competitive advantage over another

1 and all have equal access to airport facilities," isn't  
2 that right?

3 A. That is our stated position, yes.

4 Q. And earlier you mentioned relinquishing gates.

5 Does the County also have a policy to recapture  
6 gates that are being underutilized?

7 A. We have a provision to recapture preferential-use  
8 gates if they're not needed -- if the airlines is not  
9 meeting the stated demand or the utilization of that  
10 particular gate, yes.

11 Q. And that's a form of a use-it-or-lose-it policy?

12 A. Yes, it is.

13 Q. And that's in the lease agreement that we looked at  
14 earlier, correct, with your signatory carriers that the  
15 County can recapture gates that are not being fully  
16 utilized?

17 A. To the extent that the formula is not met, yes.

18 Q. And so that's another way that the County can ensure  
19 that the gates are being fully utilized and that the  
20 airport can meet the consumer demand for air service in  
21 South Florida, correct?

22 A. Yes.

23 Q. Mr. Gale, has Southwest recently announced moving  
24 some of its flights from Fort Lauderdale to Orlando?

25 A. Yes.

1 MR. AMLIN: Objection, your Honor.

2 THE COURT: Well again you say this is beyond the  
3 scope?

4 MR. AMLIN: It's leading again, your Honor.

5 THE COURT: No, I think this is going to deal with  
6 regulatory matters, so I'm going to let her have it.  
7 Overruled.

8 Have they?

9 THE WITNESS: Yes, they have, your Honor.

10 Q. And how many preferential gates does Southwest  
11 currently have at Fort Lauderdale Airport?

12 A. I believe they currently have 10 preferential-use  
13 gates.

14 Q. And of those 10, are some of those international-  
15 capable gates?

16 A. They are.

17 Q. Do you know how many are international-capable?

18 A. I think two, um, those are international, if I'm  
19 correct in my memory.

20 Q. And will the County need to recapture gates if  
21 Southwest is not meeting the formula for the use of the  
22 preferential gates?

23 A. We will go through the established process that we  
24 use for all airlines. The way that we typically work,  
25 the recapture process isn't necessarily on a specific

1 gate-by-gate, it's on the aggregate number of total  
2 gates. So in this case here, if Southwest has 10  
3 preferential-use gates and after we run the formula at  
4 the year end and they only qualify for 9, we would look  
5 to recapture one of those gates, and, um, because of  
6 their shifting of their international traffic, we would  
7 look to, more likely than not, recapture one of the  
8 international-capable gates.

9 Q. All right. Mr. Gale, moving to the potential  
10 divestiture here.

11 Do I understand you correctly that the County  
12 intends to run a process and consider any interested  
13 carrier before you would decide how to allocate  
14 JetBlue's gates?

15 A. I believe that would be our stance, yes.

16 Q. And in deciding how to allocate JetBlue's gates, the  
17 County is going to follow the competition plan, correct?

18 A. The County is going to take a look at the  
19 competition plan and then in some cases we might need to  
20 consult with the FAA, if there's an ambiguity regarding  
21 any of the policies, to make sure that we don't  
22 inadvertently step afoul of the competition plan and we  
23 wind up in a bad spot with the FAA.

24 Q. I'm sorry, "wind up with"?

25 A. In a bad spot with the FAA, having, let's say,

1       violated, inadvertently violated some portion of the  
2       competition plan. We always want to make sure we're on  
3       the right side of that.

4       Q. And in deciding how to allocate any JetBlue gates,  
5       you're going to make the best business decision you can  
6       while following the competition plan, correct?

7       A. That's correct.

8       Q. And in making this decision on how to allocate  
9       JetBlue's gates, the County will manage the demand for  
10      air service responsibly?

11      A. That is correct.

12      Q. And in deciding how to best allocate these gates,  
13      the County will be trying to meet South Florida's  
14      regional demand for air travel service, correct?

15      A. That is correct.

16      Q. Mr. Gale, in making this decision on allocating  
17      JetBlue gates, the County will be a proxy for the  
18      consumer demand in the region, correct?

19      A. Can you be a little bit more clear regarding a  
20      proxy?

21      Q. Sure, let me try it a different way.

22               In deciding how to allocate gates, the County will  
23      be a proxy for its passengers, communities, and  
24      stakeholders, correct?

25      A. I believe that's correct.

1 Q. And in making this decision, the County will be  
2 making the best decision it can to ensure competition at  
3 Fort Lauderdale Airport, correct?

4 A. I believe that is correct.

5 Q. So after you conduct your process pursuant to the  
6 competition plan, the County may decide to assign some  
7 gates to Allegiant, correct?

8 A. I believe that is a possibility, yes.

9 Q. However the process plays out, JetBlue will be  
10 relinquishing these gates and will not have those,  
11 correct?

12 A. If JetBlue approaches the County and says that they  
13 wish to relinquish a set number of gates, whether it's  
14 1, 2, 3, 5, or however many it is, part of what we need  
15 to look at to make sure that whomever would potentially  
16 access those gates or would be leased those gates, that  
17 we have the corresponding other facilities that are  
18 necessary in order to run a successful operation,  
19 whether that be ticket counters or other types of backup  
20 office space, um, baggage service office space. I think  
21 the conversation with JetBlue needs to be a  
22 comprehensive conversation regarding resources that are  
23 necessary in order to make sure that whoever would step  
24 in would have success.

25 Q. All right.



1 MS. WRIGHT: Just a moment to confer, your Honor.

2 (Pause.)

3 Q. And, Mr. Gale, just to be sure that I understand  
4 your answer.

5 If JetBlue informs you that it will be  
6 relinquishing these gates, JetBlue will no longer have  
7 those preferential gates, am I correct?

8 A. If JetBlue comes to me and says they wish to  
9 relinquish the gates, um, with no other provisions, then  
10 it comes back immediately to the County and we would  
11 follow our established process to announce the  
12 availability of those gates. If JetBlue wants to  
13 request the assignment or consent of those gates to  
14 another airline, I think we would have to take a look at  
15 that, follow the competition plan as best we can, and  
16 there are other parameters that need to be taken into  
17 place at times when we're looking as to whether the gate  
18 is international or domestic, whether it's handling a  
19 wide-body aircraft versus an air-body aircraft, because  
20 of the facility limitations. We need to take a look at  
21 all of that in context.

22 Q. Okay. But if JetBlue told you it is relinquishing  
23 these 5 gates, the County would decide how to allocate  
24 those gates, correct?

25 A. The County would go through its allocation process,

1 the announcement of availability, and its allocation  
2 process, yes.

3 MS. WRIGHT: I'll pass the witness.

4 MR. AMLIN: Your Honor, may I have one moment to  
5 confer with my colleagues?

6 THE COURT: You may.

7 (Pause.)

8 MR. AMLIN: Your Honor, two very quick questions.

9

10 REDIRECT EXAMINATION BY MR. AMLIN:

11 Q. Mr. Gale, you mentioned the construction of Terminal  
12 5 and new gates to be available there. Have you decided  
13 which carriers will receive gates at the new Terminal 5?

14 A. The initial discussions when we went through the  
15 process of reviewing the project with all of the  
16 signatory airlines at the airport, um, and because  
17 JetBlue and Spirit, um, were the ones that were seeking  
18 expansion when others were not, we did come up with a  
19 potential split of the gates whereby we'd move some  
20 airline operations around. The net gain to Spirit  
21 Airlines under that arrangement would have been 3, taken  
22 from 10 preferential or 13 preferential, um, and 2 to  
23 JetBlue -- at that time they had 15 preferential, so  
24 they would have gone from 15 to 17. That was, um,  
25 discussed with the carrier group years ago when Terminal

1 5 was originally being conceived and designed.  
2 Obviously the outcome of this may warrant that we take  
3 another look at how the allocation of those gates would  
4 be done going forward.

5 Q. Thank you, Mr. Gale.

6 MR. AMLIN: No further questions, your Honor.

7 THE COURT: Nothing further?

8 MS. WRIGHT: No, your Honor.

9 THE COURT: You may step down. Thank you.

10 I'm going to stick specifically to 10:45, because  
11 I have a school group coming in, so go ahead and call  
12 your next witness.

13 MR. BRIGGS: Sure. It will be Mr. Jarashow, your  
14 Honor.

15 THE COURT: Mr. Jarashow may be called.

16 (EVAN JARASHOW, sworn.)

17 (Pause.)

18 MR. BRIGGS: Your Honor, John Briggs for the  
19 United States.

20 THE COURT: Yes, Mr. Briggs, you may proceed.

21

22 \*\*\*\*\*

23 EVAN JARASHOW

24 \*\*\*\*\*

25

1 DIRECT EXAMINATION BY MR. BRIGGS:

2 Q. Good morning, Mr. Jarashow.

3 A. Good morning.

4 Q. Would you please state and spell your name for the  
5 record.

6 A. Of course. Excuse me. It's Evan Jarashow, E-V-A-N,  
7 Jarashow, J-A-R-A-S-H-O-W.

8 Q. And, Mr. Jarashow, we passed out binders with  
9 exhibits in your prior testimony. I'll let you know  
10 when it's time to turn to those.

11 A. Okay.

12 Q. You're employed by JetBlue, right, sir?

13 A. That's correct.

14 Q. And what is your position with JetBlue?

15 A. Manager of the International Pricing Team.

16 Q. Let's go back to the start of your career in the  
17 airline industry.

18 You worked in Revenue Management for U.S. Airways  
19 from 2006 to 2011, right?

20 A. That's correct.

21 Q. You joined JetBlue in 2011?

22 A. Correct.

23 Q. And in 2015 you began working as a manager in  
24 JetBlue's Revenue Management department, right?

25 A. That's right.

1 Q. In 2018 you became the manager of JetBlue's Pricing  
2 Team, right?

3 A. That's correct.

4 Q. And at that time you managed pricing for all of  
5 JetBlue's markets, both domestic and international,  
6 right?

7 A. Yes, that's right.

8 Q. One of your pricing analysts was Michael Hilliard  
9 who is currently the Domestic Pricing Manager?

10 A. That's correct.

11 Q. And since 2021, you focused on international  
12 markets, right?

13 A. Yes, that's right.

14 Q. Mr. Jarashow, I'd like to begin by asking about a  
15 practice called "fare flashing."

16 Are you familiar with the use of the term "flash"  
17 to describe one airline's effort to highlight a fare  
18 change to another airline?

19 A. I've come to understand it to mean that through the  
20 course of my participation in this case and in the NEA  
21 case.

22 Q. In this case and in the Northeast Alliance case?

23 A. Correct.

24 Q. And you testified at the Northeast Alliance trial,  
25 right, sir?

1 A. I did.

2 Q. Mr. Jarashow, "flashing" can involve an airline  
3 canceling and refileing its fares on the same ATPCO  
4 submission, right?

5 MS. ZIEMINSKI: Objection, your Honor, leading.

6 THE COURT: Sustained on that ground.

7 What do you understand "flashing" to be?

8 THE WITNESS: Your Honor, I've come to understand  
9 it to mean, um, changing a fare and retracting it.

10 THE COURT: Why would one do that?

11 THE WITNESS: There could be a variety of reasons.  
12 But again I've come to understand that it could be an  
13 intent to signal.

14 THE COURT: To another airline?

15 THE WITNESS: Correct.

16 THE COURT: Go ahead, Mr. Briggs.

17 MR. BRIGGS: Your Honor, before I proceed, I would  
18 just like to state that Mr. Jarashow is being held as an  
19 adverse party witness. I'm happy to establish that  
20 first --

21 THE COURT: I was mistaken. You're correct.  
22 Proceed.

23 MR. BRIGGS: Thank you, your Honor.

24 Q. Mr. Jarashow, now let's look at a few documents  
25 about "fare flashing."

1           Would you please turn in your binder to the tab  
2           marked as Exhibit JT.

3           A.   The large binder or the small one?

4           Q.   I'm sorry, it's the small binder.

5           A.   Thank you.  "JT," you said, correct?

6           Q.   That's right.

7           A.   (Looks.)

8           Q.   Mr. Jarashow, Exhibit JT is an e-mail chain among  
9           you and others in JetBlue's Revenue Management  
10          department, right?

11          A.   Yes, that looks right.

12          Q.   And the e-mail chain, it concerns fares in the  
13          Boston-Philadelphia market, right?

14          A.   That's what I see in the subject line, yes.

15               MR. BRIGGS:  Your Honor, plaintiffs offer Exhibit  
16          JT into evidence as Exhibit 785.

17               THE COURT:  No objection?

18               MS. ZIEMINSKI:  No objection, your Honor.

19               THE COURT:  It is admitted, JT, 785.

20               (Exhibit 785, marked.)

21          Q.   Mr. Jarashow, looking at the other participants in  
22          the e-mail chain.

23               Catarina Yanez is an analyst in the JetBlue  
24          Pricing Team, right?

25          A.   Correct.

1 Q. Jeremy Blackman is a manager in the Inventory  
2 Management Team, right?

3 A. Yes, that's right.

4 Q. And at the time of this e-mail, Andrew Parker was  
5 the Director of Revenue Management, right?

6 A. Yes, I believe he was.

7 Q. Now looking at Mr. Blackman's e-mail at the bottom  
8 of the first page, he states, "Is there an update on  
9 where we stand with TOD and OA matches." And to explain  
10 that for the Court, "TOD" means "Time Of Day," right?

11 A. Yes, I believe that's right.

12 Q. So when a fare is filed by an airline on ATPCO, it  
13 can include Time Of Day restrictions meaning those fares  
14 are only valid for travel at certain times of day,  
15 right?

16 A. Yes, that would be right.

17 Q. And "OA matches" refers to matching fares by other  
18 airlines?

19 A. Yes, it would.

20 Q. Now looking at the next sentence of Mr. Blackman's  
21 e-mail, he wrote "I see Americans selling the \$44 all  
22 and outside of our timebands."

23 And, Mr. Jarashow, that means American had a \$44  
24 fare in the Boston-to-Philadelphia market that did not  
25 match the Time-Of-Day restrictions of JetBlue's fare,



1 right?

2 A. Yes, I believe that's right.

3 Q. In other words, at Times Of Day outside of JetBlue's  
4 timeband, American's fare was \$44 and JetBlue's was  
5 higher, right?

6 A. That seems about right.

7 Q. And let's look at Ms. Yanez's response at the top of  
8 the first page.

9 She wrote that she had discussed this issue with  
10 "Evan," and that's you, right, Mr. Jarashow?

11 A. Yes.

12 Q. And she continued that, um, "for the 4:00 p.m.  
13 subs," that's a reference to the 4:00 p.m. ATPCO  
14 submission, right?

15 A. Yes, that's right.

16 Q. She wrote, "I'll do an ADB slash CXL to try to flash  
17 American, and if it doesn't work, then we'll discuss  
18 further actions."

19 "ADD/CXL" stands for "Add/Cancel," right?

20 A. Yes, I believe it's a shorthand for that.

21 Q. And Ms. Yanez was saying, in this e-mail, that she  
22 would cancel JetBlue's fare and refile it on the same  
23 4:00 p.m. ATPCO submission, right?

24 A. That's what I believe she's saying, yes.

25 Q. And she described this as trying to "flash

1 American"?

2 A. Um, that's what she said, yes.

3 Q. By "flashing American," using an Add/Cancel, you  
4 understand Ms. Yanez was trying to draw American's  
5 attention to this particular fare, right?

6 MS. ZIEMINSKI: Objection, foundation.

7 THE COURT: No, overruled.

8 A. I don't recall thinking of it, at the time, as  
9 drawing attention to a fare or signaling, but I see that  
10 that's what she said.

11 Q. And, um, Ms. Yanez reported to you at the time of  
12 this e-mail, right?

13 A. Um, yes, she would have.

14 Q. And she stated in the e-mail that she discussed this  
15 action with you, right?

16 A. That's what she said, yes.

17 Q. You communicated frequently with Ms. Yanez about her  
18 actions, right?

19 A. Occasionally. I wouldn't say "frequently." But  
20 occasionally, yes.

21 Q. Do you have any reason to believe that she was  
22 suggesting something other than drawing American's  
23 attention to this particular fare?

24 A. Um, well again I don't recall thinking of it as  
25 "drawing attention to a fare at the time." But looking

1 back on it now, that's the way I interpret it.

2 Q. A reason to flash American would be to encourage  
3 American to change its fare so it would be within  
4 JetBlue's timeband, right?

5 A. Again I don't recall thinking this is really drawing  
6 attention or trying to encourage a carrier to do  
7 anything specific. Looking back on it now, that's the  
8 way I interpret it.

9 Q. And if American were to make such a change,  
10 American's price would increase outside of JetBlue's  
11 timeband, right?

12 A. It seems like that would have been the outcome.

13 Q. You can set the exhibit aside.

14 MR. BRIGGS: Your Honor, I'm happy to stop here or  
15 move on.

16 THE COURT: No, I'm trying not to waste time, so  
17 why don't you move on a little while and I'll see if I  
18 need to break.

19 MR. BRIGGS: Of course.

20 Q. Mr. Jarashow, would you please turn to the tab  
21 marked as Exhibit FB in this same binder?

22 A. "FB," you said?

23 Q. "FB" as in "bravo."

24 A. Thank you. (Turns.)

25 Q. Mr. Jarashow, is Exhibit FB a chat between you and

1 your colleague, Ann Masline, regarding fare filings?

2 A. It looks like it is, yes.

3 Q. Ms. Masline is and was a Pricing Analyst for  
4 JetBlue, right?

5 A. Correct.

6 MR. BRIGGS: Your Honor, the plaintiffs offer  
7 Exhibit FB into evidence as Exhibit 786.

8 THE COURT: "FE," right?

9 MR. BRIGGS: "FB," as in "bravo."

10 THE COURT: All right.

11 No objection?

12 MS. ZIEMINSKI: No, your Honor.

13 THE COURT: "FB" is admitted, Exhibit 786.

14 (Exhibit 786, marked.)

15 Q. I'm looking at the first three messages in the chat,  
16 Mr. Jarashow.

17 Ms. Masline was asking about where other airlines  
18 --

19 THE COURT: Forgive me, Mr. Briggs, but I think  
20 our guests have arrived. So we'll take the morning  
21 recess now till 20 minutes after 11:00. We may all  
22 stand in recess.

23 THE CLERK: All rise.

24 (Recess, 10:50 a.m.)

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C E R T I F I C A T E

I, RICHARD H. ROMANOW, OFFICIAL COURT REPORTER,  
do hereby certify that the foregoing record is a true  
and accurate transcription of my stenographic notes  
before Judge William G. Young, on Wednesday, November  
15, 2023, to the best of my skill and ability.

/s/ Richard H. Romanow 11-15-23

\_\_\_\_\_  
RICHARD H. ROMANOW      Date